

Court of Appeals, State of Michigan

ORDER

People of MI v Theodore Morgan

Docket No. 284161

LC No. 06-010644-01

Christopher M. Murray
Presiding Judge

Michael J. Talbot

Kurtis T. Wilder
Judges

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the January 30, 2008, order of the Wayne Circuit Court dismissing the charge against defendant hereby is VACATED. Contrary to the court's order of dismissal, MCL 771.1 does not provide the circuit court with the authority to dismiss the case over the prosecution's objection. See *People v Leonard*, 144 Mich App 492; 375 NW2d 745 (1985); *People v Monday*, 70 Mich App 518, 522; 245 NW2d 811 (1976).

The Court further notes that, while the register of actions indicates that the plea was "entered and accepted" on January 25, 2007, the transcript from that date reflects that the trial court took defendant's plea under advisement. Further, the order of conviction in the file is unsigned. Thus, the record does not reflect that the trial court actually accepted defendant's guilty plea. A guilty plea taken under advisement does not result in a conviction if the court does not accept it. *Blase v Appicelli*, 195 Mich App 174, 178; 489 NW2d 129 (1992). The parties appeared before the circuit court one year later and the register of actions contains an entry indicating: "01/30/08 Motion to Withdraw Guilty Plea Granted (Pre Sentence)." Thus, before the trial court made any formal ruling regarding the plea under advisement, defendant withdrew the plea. This defendant therefore stands before this Court without a conviction of the pending charge. Consequently, this matter shall proceed in the circuit court with a trial, plea as charged, or other resolution agreed to by the parties and the circuit court. The case is REMANDED to the circuit court for further proceedings consistent with this order.

This order is to have immediate effect, MCR 7.215(F)(2). The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

OCT 21 2008

Date

Sandra Schultz Mengel
Chief Clerk